

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NOS.2698 AND 2708 OF 2020

AND

CRLM.P.NOS.1624 AND 1338 OF 2020

N.Krishnan
No.37, 1st Floor,
3rd Street, (Dam Street),
Salangapalayam, Bhavani Taluk,
Erode District-638 301.

.... Petitioner in both Crl.O.P's

Vs.

A.Sampoornam
W/o Anbazhagam,
No.13/79 A Velliyanaikattur,
Kodumudi Post,
Erode District-638151.

.... Respondent in both Crl.O.P's

COMMON PRAYER:

Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the docket order dated 12.11.2019 made in CRL.M.P.Nos.1723 and 1724 of 2019 in STC No.309/2019 on the file of the District Munsif Judicial Magistrate, Kodumudi and set aside the same by allowing this Criminal Original Petition.

For Petitioner : Mr.V.Anandhamoorthy

For Respondent : No Appearance

COMMON ORDER

These petitions have been filed challenging the order passed in CRL.M.P.Nos.1723 and 1724 of 2019 in STC.No. 309 of 2019 dated 12.11.2019 wherein the District cum Judicial Magistrate, Kodumudi allowed the petitions filed by the respondent under Section 311 of Cr.P.c to re-open the evidence on the side of the respondent and examine the daughter of the respondent and two Bank managers.

2. The learned counsel for the petitioner would submit that the petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. After lodging the complaint, the respondent herein was examined as P.W.1 and after examining her witness, the witness of the complainant/petitioner herein was closed. After questioning under Section 313 of Cr.P.c the matter was posted for arguments on 5 occasions. Thereafter, the respondent herein filed a petition Under Section 311 of Cr.P.C to recall P.W.1 and also to re-open the evidence and to examine other witnesses under Section 254 Sub Clause(2) of Cr.P.C. Even though the respondent had filed a detailed counter, the trial Court has mechanically allowed the petition filed by the respondent by observing that by allowing the petition, no prejudice would be caused to the petitioners.

3. He would further submit that the matter was posted for arguments on 5 occasions, only to fill up the lacuna and the respondent had filed the petition to examine the respondent daughter and her Bank manager. The said petition was filed to re-open and to examine the respondent's daughter and her bankers to prove that the amount had been transferred from her account and in turn, the said amount was borrowed by the petitioner herein. Therefore, he prays to set aside the order passed by the Trial Court.

4. Heard Mr.V. Anandhamoorthy the learned counsel appearing for the petitioner. Though notice was served to the respondent and name is printed in the cause list no one appeared on behalf of the respondent either through person or through counsel.

5. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under section 138 of Negotiable Instruments Act. According to the respondent, the petitioner borrowed a sum of Rs.7,60,000/- for his urgent expenses and on the same date, to discharge the said liability, the petitioner issued two post dated cheques. Both the cheques were presented for collection and both were returned dishonoured. After issuing the statutory notice, the respondent filed an application for the offence punishable under Section 138 of the Negotiable Instruments Act on 06.02.2018. After completing the evidence on the side of the complainant, the matter was posted for questioning under Section 313 of Cr.P.C. Thereafter, the matter was posted for arguments on five occasions namely 29.05.2019, 10.06.2019, 17.06.2019, 01.07.2019, and 23.07.2019 and finally the matter was posted for arguments on 13.08.2019. Thereafter, when the matter was pending for arguments, the respondent filed a the petition to reopen the examination the respondent/complainant and examine her daughter and the Bank Manager of State Bank of India and the Manager of

HDFC Bank as witness.

6. The petitioner also filed a detailed counter and objected for the reason that the petition has been filed only to fill up the lacuna and to drag on the proceedings. Further, the petitioner has stated that the witnesses, as mentioned by respondent, are not at all necessary and they are unwarranted to adduce any evidence in the present case. Since, the respondent's daughter and the managers of the bank are in no way related to the case on hand. Therefore, the petitioner prayed for dismissal of the petition. However, without considering the said issue, the Trial Court passed a non speaking order stating that by allowing the said petition no prejudice would not be caused to the petitioner. Hence, that petition was allowed that too in the fag end of the trial when the matter was posted for arguments.

7. On a perusal of the records it is seen that at the time of cross examination of the respondent/complainant stated that she has no individual income and her husband and daughter are going to job and earning. The respondent gave a part of the cheque amount to the petitioner herein from their salary account. Therefore, she wants to recall and reopen her evidence.

8. Apart from that, the daughter of the respondent and the managers of her banker are in no way related to the respondent herein and they are also unnecessary witnesses. Since, there is no direct transaction between the petitioner and the daughter of the respondent in the present case. Therefore, without considering the facts of the case the Trial Court has mechanically allowed the petition filed by the respondent and it cannot be sustained and is liable to be dismissed.

9. Accordingly, both the above Criminal Original petitions are allowed and the order passed in CrI.M.Ps.1723 and 1724 of 2019 in STC No.309 of 2019 are hereby set aside.

10. The trial Court is directed to complete the trial and dispose the case within a period of 8 weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

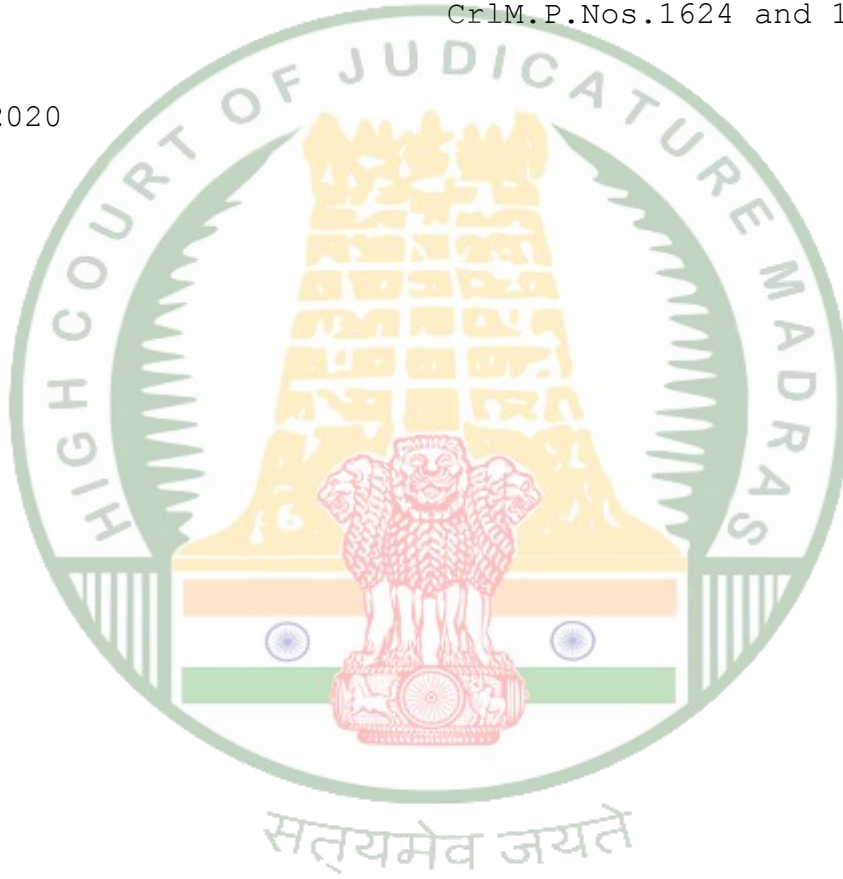
1. The District Munsif Judicial Magistrate,
Kodumudi.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Anandhamoorthy, Advocate, S.R.No.30311

Crl.O.P.Nos.2698 and 2708 of 2019
and
CrlM.P.Nos.1624 and 1338 of 2020

AJS (CO)
CS/29/10/2020



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